

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KATHRYN LISTER, an individual,

Plaintiff

v.

HYATT CORPORATION, a Delaware
corporation d/b/a HYATT REGENCY
BELLEVUE,

Defendants.

NO. 2-18-cv-00961-JLR

DECLARATION OF STEPHEN G.
SKINNER IN SUPPORT OF
DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT RE:
AFFIRMATIVE DEFENSES 1, 2, AND 4-
12

**NOTE ON MOTION CALENDAR:
August 2, 2019**

I, STEPHEN G. SKINNER, hereby declare as follows:

1. I am over the age of 18 years and am a citizen of the United States. I am one of the attorneys for Defendant Hyatt Corporation in this lawsuit. I have personal knowledge of the facts set forth herein and am competent to testify at trial.

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FOR PARTIAL SUMMARY JUDGMENT RE:
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(2-18-cv-00961-JLR) - 1

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1 2. Attached as Exhibit 1 is a true and correct copy of excerpts of the Deposition of
2 Roxanne Hugo-Taggart.

3 3. Attached as Exhibit 2 is a true and correct copy of Defendant Hyatt Corporation's
4 First Interrogatories and Requests for Production to Plaintiff Kathryn Lister And Plaintiff's
5 Responses Thereto without attachments dated November 5, 2018.

6 4. On May 3, 2019, the Defendant asked the plaintiff to sign releases, authorizing the
7 Defendant to obtain her medical records. Although plaintiff indicated her intention to sign the release,
8 the plaintiff did not actually return the executed release until June 10, 2019. Upon receiving the
9 signed release, Defendant started collecting the plaintiff's medical records.

10 5. On July 8, 2019 counsel for the parties discussed, and plaintiff represented that she
11 was considering pursuing a lost wages claims. Previously, plaintiff had represented that she did not
12 intend to seek such damages and declined to respond to written discovery relating to this damage
13 component. As of July 8, 2019, plaintiff had not supplemented any of her discovery responses related
14 to a lost wages claim, and the expert disclosure deadline was weeks away. At the same time, July 8,
15 2019, Defendant asked plaintiff to undergo an independent medical examination with its expert
16 Theresa McFarland, MD. Defendant requested the plaintiff submit to the exam on July 22, 2019,
17 which would have provided the Defendant with time to conduct the examination and to satisfy the
18 expert disclosure deadline. Plaintiff responded that she was unavailable to participate in discovery
19 for the latter portion of July.

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1 6. The parties agreed the plaintiff would undergo an examination by Dr. McFarland on
2 August 22, 2019 in Seattle, Washington. The exam is presently scheduled, and there is no indication
3 that it will not go forward as scheduled.

4 7. On July 23, 2019, Defendant contacted plaintiff, confirmed the examination of the
5 plaintiff by Dr. McFarland, requested the plaintiff supplement her discovery responses relating to her
6 claims for economic damages, and requested the plaintiff provide available dates for a deposition. *Id.*
7 The plaintiff responded that she was available August 14, 2019 for her deposition, and the parties
8 agreed to set the deposition of the plaintiff on August 14, 2019.

9 8. From the outstanding and upcoming discovery, Defendant expects to obtain
10 information and expert opinion regarding the plaintiff's injuries, conditions, or complaints that are
11 related to the incident and will defeat summary judgment on the issue of mitigation. Both in
12 discovery and informally through her counsel, plaintiff represented that after the incident, she
13 suffered from ongoing mobility and stability issues. The mobility and stability issues allegedly
14 caused her to have numerous falls, and she is claiming that one of those falls led to a rotator cuff
15 tear. Directly relevant to the Defendant's failure to mitigate defense is whether plaintiff is
16 appropriately safeguarding herself from falls due to any claimed mobility and stability issues and
17 the nature and extent of the treatment plaintiff is receiving for both the mobility and stability issues
18 and claimed rotator cuff tear. The requested supplemental discovery responses, the deposition of
19 the plaintiff, and the examination by Dr. McFarland will elicit facts and opinions directly related
20 to these issues and necessary to respond to a motion for summary judgment. For instance, plaintiff
21 is claiming ongoing mobility and stability issues, to what extent, if any, is she using assistive
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1 devices, including a walker or cane, and if the plaintiff is claiming a torn rotator cuff tear, is she
2 undergoing treatment or surgery for that alleged tear.

3 I declare under the penalty of perjury under the laws of the State of Washington and the
4 United States of America that the foregoing is true and correct.

5 DATED this 29th day of July, 2019.

6 ANDREWS ▪ SKINNER, P.S.

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8 By s/ Stephen G. Skinner

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2019 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record. A copy will also be sent via email and US Mail to plaintiff's attorney listed below:

Attorneys for plaintiff:

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